Statement of

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Mr. Chairman and Members of the Subcommittee:

Introduction

Thank you for inviting me to testify today on the opportunity that America has to achieve a comprehensive first-step air transport agreement with the European Community and its twenty-five member states.

Let me commend the Subcommittee for taking up this important subject. Over the past decade and a half, with support from both sides of the aisle in Congress, we have reached Open Skies agreements with over seventy countries around the globe. In a dramatic departure from the highly restrictive and regulatory accords that characterized international aviation over most of its history, those agreements have:

- **vastly expanded markets for our airlines in Europe, Asia, Africa, and the Western Hemisphere;**
- **created countless jobs not only in our aviation, tourism, and export industries but also far beyond, in virtually every industrial and service sector;**
- **bolstered the vibrancy and economic well-being of U.S. airports, cities, and communities, large and small;**
- **provided manufacturers, merchants, and shippers new opportunities to provide their customers efficient, secure, and timely transport of high-value cargo; and**
- **given America's travelers new and better air service at affordable prices, ending the era when international travel was a luxury available only to the wealthy.**

The comprehensive first-step liberalization agreement we have now negotiated with the European Union—an agreement we hope to sign as early as June of this year—would carry forward our country's Open Skies policy:

- **It would safeguard the invaluable rights we obtained between 1992 and 2002 in bilateral Open Skies accords with fifteen of the twenty-five EU member states.**
- **It would expand full Open Skies rights to the remaining ten member states: the United Kingdom, Spain, Ireland, Greece, Hungary, Cyprus, Estonia, Latvia, Lithuania, and Slovenia.**
- **It would enlarge opportunities for our cargo carriers to build global networks for a global economy.**
- **It would create important new opportunities for our passenger carriers including network carriers, which have increased their focus on international markets.**
- **It would establish foster cooperation in areas as diverse as airline competition policy, aviation security, consumer protection, and environmental issues; would create a Joint Committee of U.S. and EU representatives; and would commit both sides to work toward further liberalization.**
- **Indeed, the agreement would alter the essential structure of transatlantic air services, increasing competition and benefiting consumers beyond what is possible through bilateral accords.**

- **Finally, as a comprehensive Open Skies agreement in the world's largest aviation market, a U.S.-EU accord would set an example for the rest of the world, where narrow, protectionist aviation policies still thrive.**

The Path to Negotiations

On November 18, 2005, we completed negotiation of the full text of a comprehensive air transport agreement with the European Community and its twenty-five member states. Before turning to the substance of the agreement and a discussion of what lies ahead, it is appropriate to describe how we arrived at this juncture.

The early history, beginning over a decade ago, was one of sustained tension between the Commission and member states over competence for external aviation relations. In the early 1990's, the Commission sought to negotiate a cargo-only agreement with the United States but was thwarted by member state opposition. For our part, we seized opportunities to move ahead bilaterally with interested member states. We negotiated the first Open Skies agreement with the Netherlands at the end of the first Bush Administration and then continued that effort under Presidents Bill Clinton and George W. Bush, concluding Open Skies accords, as noted earlier, with fifteen of the EU member states by early 2002. These agreements afforded U.S. airlines unprecedented access and flexibility in their services to Europe—access that has served America's legacy carriers particularly well as the domestic market has become more challenging.

During the same period, the European Community was creating an open internal market within Europe through three stages—or "packages"—of liberalization. Notwithstanding liberalization within the EU, however, the member states refused Commission entreaties for a full mandate to negotiate an air transport agreement with the United States, authorizing it in 1996 to negotiate only so-called "soft rights," things like groundhandling and dispute settlement, but not subjects at the core of an air transport agreement, such as routes and rates. We held informal talks, but little progress was possible where our partner lacked the ability to address those core issues.

In 1998, the Commission went to the European Court of Justice (ECJ) to force the hand of the member states, challenging the legality under EU law of the seven then-existing Open Skies agreements with the United States, and of our 1977 Bermuda 2 accord with the UK. In November 2002, the ECJ issued judgments in the eight cases. It found that, although member states retained authority to negotiate bilateral agreements, certain provisions in the existing agreements were inconsistent with European law. In addition to the provisions on pricing within the European Union and on computer reservation systems, the ECJ found that the traditional article on ownership and control—the so-called "nationality clause"—violated member state obligations under EU law. After several months of internal debate, the member states granted the Commission a negotiating mandate in June 2003.

The United States saw this new mandate not as a threat but rather as an opportunity to expand Open Skies to all of the EU and, possibly, to go beyond the traditional Open Skies approach in areas of mutual interest. We also envisioned the potential to set a precedent of global significance. As Under Secretary Shane expressed it in late 2002, we saw a chance to consider how to "take liberalization to the next level" and to think seriously about "how the transatlantic market can be made more robust and competitive." We saw in the European Union, again to use Under Secretary Shane's words, "a like-minded partner on the other side of the negotiating table that represents an airline industry and an aviation market comparable to our own." We understood that success in establishing a liberal regime on the transatlantic would have a profound, positive, and irreversible effect on international civil aviation.

For this reason, at the U.S.-EU Summit in June 2003, President Bush joined his European Union counterparts in announcing the start of comprehensive air services negotiations. It was, they said, "an historic opportunity to build upon the framework of existing agreements with the goal of opening access to markets and maximizing benefits for consumers, airlines, and communities on both sides of the Atlantic."

<u>The Negotiating Process and Results</u>

Formal talks began in October 2003. The U.S. delegation included representatives from State, the Department of Transportation including the FAA, Commerce, Defense, Justice, Homeland Security, and the

General Services Administration. Representatives from airlines, airports, labor, and computer reservation systems were included as advisers and observers, as were interested members of relevant committee staffs from both the House and Senate. Our approach to these negotiations, as in all our air services talks, was one of inclusivity. This does not mean that we were able to please every participant all the time, but it did ensure that we had the benefit of wide-ranging expertise, and it guaranteed that decisions within the Administration took into account the full range of stakeholder views and interests.

As the talks began, each side brought a different perspective to the table. For our part, the United States focused on a handful of core objectives. First, and most important, we insisted that Open Skies principles must extend to the entire European Union, not just the fifteen Member States with which we had bilateral Open Skies agreements. From our perspective, it was important to establish a common foundation of traffic rights, including unrestricted market entry, unlimited frequencies, open route descriptions with unlimited beyond rights to every point on the globe, and market-based pricing. We also insisted upon strong, clear provisions on safety and security, the only foundation upon which we are prepared to build a commercial air services relationship, a perspective shared by our EU counterparts. I am pleased to report that the agreement we have negotiated meets these Open Skies objectives in full for all twenty-five EU member states.

In addition to Open Skies principles, I will mention three other issues that we raised during the negotiations: airport noise restrictions, labor concerns, and the Bermuda 2 agreement with the United Kingdom.

First, because of concerns about environmental restrictions at European airports, we asked that both sides affirm their commitment to the principle of the balanced approach to noise management adopted in 2001 by the Assembly of the International Civil Aviation Organization in reaction to the EU's unlawful hushkits regulation. In the negotiations, we were successful in obtaining a commitment to the balanced approach. In addition, we maintained the longstanding prohibition on taxation of fuel.

Second, we used the negotiations to raise issues important to U.S. labor. We sought clarification of EU rules addressing issues relating to so-

called flags of convenience, a concern tied in part to the expansion of the EU to twenty-five states. We also asked that the Joint Committee review after one year the effects of the new agreement on workers. And we stipulated that the provision of foreign aircraft with crew to U.S. carriers would not be permitted if it would give an unreasonable advantage to any party during a labor dispute where the inability to accommodate traffic in a market is a result of that dispute. Again, I am pleased to report that we obtained the labor-related provisions that we sought.

Finally, we noted the concerns of some U.S. stakeholders about slot limitations at European airports and sought language in the agreement to ensure that we could raise problems in the U.S.-EU Joint Committee. The agreement we negotiated contains precisely such a provision. We did not, however, insist that the European Union carve out special infrastructure advantages solely for American carriers, such as designated slots, gates, and counters at London's Heathrow Airport. Such infrastructure advantages would be inconsistent with European Union legislation and with well-established international norms for slot allocation—norms that we insist upon with other countries. To have demanded free slots for U.S. carriers would have meant expropriating slots from other carriers and would have sounded the deathknell of the negotiations. Indeed, one suspects that those who call for unlimited free slots at Heathrow are aiming precisely at the failure of these negotiations in order to preserve protectionist limits that may be good for next quarter's bottom line but are deeply injurious to broader U.S. interests, including the interests of other U.S. carriers, U.S. consumers, and our national economy.

Those protectionist limits are found in our almost thirty-year-old aviation agreement with the United Kingdom, the notorious Bermuda 2 accord. Bermuda 2 is the antithesis of Open Skies, severely limiting the number of carriers, the cities they serve, the airports they use, the other countries to which they fly, and the fares they offer. To take but one example, a cargo carrier such as Federal Express is barred from connecting London to its European hub in Paris and from serving beyond markets such as China. The agreement with the EU would end all these anachronistic limitations—something we have sought to accomplish for a quarter century. This in itself is an enormous achievement for the United States.

For its part, the European Union entered the negotiations with a mandate to achieve a radically transformed "Open Aviation Area" with the United States that would have required repeal of the U.S. statutory prohibition on cabotage, abrogation of the Fly America Act, fundamental changes in U.S. law so as to allow European nationals to own and control U.S. airlines, and a problematic commitment to the mutual recognition of each other's rules in areas such as safety and security.

Although we could not agree to these proposals, we did seek in the negotiations to listen to other European requests, to be responsive where possible, and also to use the negotiations to review some of the specific provisions in our standard Open Skies text. We made clear that we could meet the most pressing EU requirement, namely, to remedy the deficiencies under EU law identified by the European Court of Justice and, in doing so, to accommodate the EU's interest in eliminating international legal barriers to consolidation of the European airline industry. We responded with a new provision that, in effect, authorizes every European carrier to operate to the United States from any and all points in the EU. We saw such a provision as a plus for U.S. cities that might like to encourage, for example, Lufthansa to provide service from Milan, or British Airways from Frankfurt, or Air France from Madrid, especially where the carriers traditionally associated with those cities do not provide service. Moreover, the new provision is critical to the stability of the transatlantic market, eliminating fully the legal deficiencies under EU law identified by the European Court of Justice.

Beyond this provision, however, we also listened carefully and with an open mind to European suggestions in other areas. As a result, we were able, in my view, to improve upon our standard Open Skies model in a number of respects while also being responsive to EU needs. Put a different way, it takes two to tango in any negotiation, and we were happy to learn a few new steps in the process. Let me mention some examples:

- **We agreed to eliminate the longstanding requirement for formal designation of airlines, shearing away unnecessary red tape;**

- **We agreed on an Annex for far-reaching cooperation in airline competition matters between the Commission and the Department of Transportation;**
- **We added new provisions on state aids, the environment, and consumer protection;**
- **We agreed, on the basis of reciprocity, to include authorization for EU airlines to provide aircraft with crew to U.S. carriers for international operations, subject to appropriate measures to protect aviation safety and address legitimate labor interests;**
- **We negotiated new language on computer reservation systems (CRS) that is consistent with the decision by DOT in 2004 to end CRS regulation in the United States but that also guarantees national treatment to the CRS vendors of each side; and**
- **We agreed on some changes in the traditional text of our aviation security article—changes that maintain each side's fundamental right to implement measures to protect homeland security while also fostering increased cooperation with the goals of avoiding inconsistent requirements on airlines and facilitating rapid and efficient movement of passengers and cargo.**

The negotiations that began in October 2003 were among the longest, perhaps the most difficult, and certainly the most ambitious in modern U.S. air transport history. In fact, one could argue, in the history of international air transportation. An initial package we had largely worked out with the European Commission in the spring of 2004 proved unacceptable to the European Council of transport ministers. We had to work long and hard in the first nine months of 2005 to establish a basis for resuming negotiations in the fall. When we did, we discovered a renewed commitment on both sides of the Atlantic to find common ground and achieve success. Two intense rounds of talks—the first in Brussels in October and the second here in Washington in November—yielded the breakthrough I have described. We now have a fully agreed text of a U.S.-EU Air Transport Agreement and accompanying Memorandum of Consultations that clarifies certain provisions and understandings of the two sides. In advance of today's hearing, we have submitted to the Subcommittee copies of both texts, together with the Record of Negotiations signed by the delegation heads at the conclusion of our negotiations on November 18.

Next Steps

As that Joint Statement indicates, the EU Transport Council of Ministers, in which each of the twenty-five member states is represented, must approve signature of the agreement. In making a decision, the EU has informed us that it will take into account the outcome of the rulemaking process initiated by DOT to expand opportunities for foreign citizens to invest in, and participate in the management of, U.S. air carriers.

In practical terms, this means that the EU will await a final rule. If a final rule is issued this spring, we expect the EU transport ministers to reach a decision when they meet in the Transport Council on June 8-9. If their decision is positive, we would aim to sign the agreement soon thereafter and apply it as of October 29, the start of the winter traffic season.

Conclusions

It was a deep honor when Secretaries Rice and Mineta vested me with the unique opportunity and, equally, the enormous challenge of chairing the U.S. delegation in negotiations with the European Union. I had the advantage of the deep expertise and commitment of my senior DOT counterpart on the delegation, Mr. Paul Gretch, and of other colleagues from State, DOT, and other U.S. agencies, as well as the counsel of many colleagues from our airlines, airports, labor unions, and industry associations. We have sought to keep your Subcommittee informed on a timely basis of the progress—and the occasional set-backs—in the negotiations at each step of the way.

Is the agreement we have negotiated perfect? No, I cannot make that claim. Like any product of tough and extended negotiation, it contains elements of compromise. However, I am convinced and hope that you will agree that this agreement—historic by any measure—more than meets the fundamental American objectives of securing our existing Open Skies rights in Europe, expanding those rights to all of the European Union, and establishing a template of opening markets, encouraging vigorous airline competition, and forging close aviation cooperation in the future.

If we are able to move forward and sign the agreement this year, we and Europe will send a message to all the world that the days of narrow and protectionist bilateralism are drawing to a close and that open markets and airline competition represent the future of international aviation.

Again, I am deeply honored to have been given a role in this important effort and to have been asked to appear before you today. I urge you to support this historic endeavor.

Thank you.